

**In the
Indiana Supreme Court**

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| EDWARD and RITA MOSER |) | Supreme Court No. 20S00-0509-SJ-408 |
| |) | |
| vs. |) | |
| |) | Case No. 20D06-0404-PL-222 |
| ROBERT and DONNA MOSER |) | in the Elkhart Superior Court |

ORDER DENYING REQUEST TO RECONSIDER

Comes now defendants, and move this Court to reconsider its Order of September 30, 2005, remanding this case to the trial court.

The Court's Order was in response to the certification from the Clerk of the Elkhart Superior Court for the appointment of a special judge pursuant to Ind. Trial Rule 53.1. Trial Rule 53.1 requires a trial court judge to rule on certain matters within prescribed time periods or be subject to having the matter withdrawn from the judge's jurisdiction and a special judge appointed. However, the "time limitation for ruling ... exclude[s] any period after which the case is referred to alternative dispute resolution and until a report on the alternative dispute resolution is submitted to the court." This Court found that there had been no violation of the rule because the Chronological Case Summary (CCS) showed that the trial court had ordered mediation in this matter and no report on the mediation had been submitted. As such, the Order denied the request for appointment of a special judge.

In defendants' pending request to the Court to reconsider the Order, counsel makes a series of valid policy arguments as to why an exception to the time limitation for ruling for alternative dispute resolution is ill-advised. The Court has given careful consideration to counsel's submission but concludes that, however valid these arguments may be for changing the rule, the rule as currently written and in effect should be applied in this case.

IT IS, THEREFORE, ORDERED that the motion to reconsider is DENIED.

The Clerk of this Court is directed to forward notice of this Order to the Hon. David Bonfiglio, Elkhart Superior Court, 315 South Second Street, Elkhart, IN 46516; to the Hon. David A. Denton, Elkhart Superior Court, 315 South Second Street, Elkhart, IN 46516, and to the Clerk of the Elkhart Superior Court.

The Clerk of the Elkhart Superior Court is directed to forward notice of this Order to all parties of record in the case below.

DONE at Indianapolis, Indiana, this _____ day of January, 2006.

Randall T. Shepard
Chief Justice of Indiana

All Justices concur.